75

2

No. 07-1290

FILED
MAY 13 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

LOUIS S. SADLER AND MARGARET A. SADLER,

Petitioners,

v.

CHESTER H. HINE AND LEEANN HINE,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of New Mexico

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BILL CHAPPELL, JR., ESQ.
Counsel of Record
CHAPPELL LAW FIRM, P.A.
6001 Indian School Rd. NE,
Suite 150
Albuquerque, New Mexico 87110
(505) 878-9600

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
CONSTITUTIONAL PROVISIONS	1
STATEMENT OF THE CASE	1
ARGUMENT	3
I. The Punitive Damages Award (a 2-to-1 Ratio) is Reasonable Under Constitutional Standards	3
II. Punitive Damages Were Not Used to Punish for Defense of the Claim	6
CONCLUSION	7

TABLE OF AUTHORITIES

Page

CASES

BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996) 3, 5

Continental Trend Resources, Inc. v. OXY USA Inc., 101 F.3d 634 (10th Cir. 1996) 5

Philip Morris USA v. Williams, 127 S. Ct. 1057 (2007) 3

State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003) 3, 4

TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 113 S. Ct. 2711, 125 L. Ed. 2d 366 (1993) 5

CONSTITUTIONAL PROVISIONS

Petitioners have never previously raised the issue of any violation of Amendments I or VIII to the United States Constitution. Such issues were neither considered nor decided by the New Mexico Court of Appeals nor the New Mexico Supreme Court. The appeal of the punitive damage award was based only upon due process concerns.

STATEMENT OF THE CASE

Louis Sadler was both a licensed real estate agent and a licensed general contractor in the state of New Mexico. His company built the residence sold in 2003 to Plaintiffs/Respondents, Chester and Leeann Hine. The Sadlers did not dispute, in their appeal, *any* of the factual findings supporting the punitive damage award.

The Sadlers were not asked on the Seller's Disclosure Statement whether any "infestation" existed. The subject disclosure boxes pertained to (1) the past or present existence of any pests (. . . mice); and (2) any past or present treatment for the eradication of any pests. The Sadlers had sprayed for mice, left boxes of poison, found droppings in a cabinet, and used high-frequency deterrent devices. Evidence of a gross mouse infestation was subsequently found behind every wall in the house. One of the remediation supervisors stopped counting the number of dead mice after finding 90 in two rooms of the house.

According to an expert witness, the possible health risks included typhus, hanta virus, salmonella, plague, lice and scabies. The Trial Court found Mr. Sadler's denials and attempted qualifications to be incredulous, not credible, and supportive of a finding of intentional deceit. While the Sadlers testified they did not know the extent of the infestation, the Trial Court found that the Sadlers did know of a significant infestation and fraudulently misrepresented the condition of the home. Record at 806-09, 811.

With regard to the carpet stains caused by pet urine, the Sadlers violated paragraph M 10 of the Seller's Disclosure Statement which required disclosure of any stains in the carpet which may not be visible due to furniture or rugs. The Sadlers denied any knowledge of such stains at the time of sale, but the Trial Court found their knowledge of such stains was proven by: (1) replacement of the entire carpet in 2002 because of the same types of stains; (2) purchase of top-of-the-line padding in 2002 to mitigate odors; (3) testimony by the carpet supplier of the Sadlers' knowledge of the dogs' incontinence as the reason for replacement in 2002; and (4) the massive number of stains occurring within one year's time. Again, the Trial Court found the Sadlers' denials to be without any credibility and found fraudulent misrepresentation. Record at 809-11. If the Hines themselves had not had a dog that detected the problems with the mice and carpet after the sale, the Sadlers' deceit could have been successful. While the Trial Court did find that the Sadlers had agreed, prior to trial to pay

for carpet replacement ($7,541.00), that offer did not include the pad or all of the carpet that was required to be replaced. Furthermore, no such payment was ever made.

ARGUMENT

I. The Punitive Damages Award (a 2-to-1 Ratio) is Reasonable Under Constitutional Standards.

The Sadlers admit that substantial evidence supports an award of punitive damages, but they argue that the amount was too great. Their argument does not comport with the facts nor with Supreme Court precedent.

The Supreme Court recently addressed consideration of punitive damages in *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007). The leading cases for determination of excessiveness of a punitive damage award remain *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75, 116 S. Ct. 1589, 1598-99, 134 L. Ed. 2d 809 (1996) (excessiveness depends upon the reprehensibility of the defendant's conduct, whether the award bears a reasonable relationship to the actual and potential harm caused, and the difference between the award and sanctions authorized or imposed in comparable cases) and *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003) (excessiveness more likely where ratio exceeds single digits).

The undisputed facts in this case easily support the simple 2-to-1 ratio of punitive damages to compensatory damages. The Sadlers engaged in intentionally deceitful conduct involving multiple false disclosures. Sadly, they continue to misrepresent the facts to the United States Supreme Court. They were not asked on the Seller's Disclosure Statement to check any boxes pertaining to "infestation" (see Petition at 4, 12). They were simply asked to disclose any knowledge of the past or present existence of any pests or treatment for pests (with a definition which included mice). They had perfectly good knowledge of the urine-stained condition of the carpet before the sale, yet they suggest they were newly apprised of its true condition after the sale (see Petition at 6, 12). They made false disclosures twice for each condition. Given the Sadlers' level of knowledge and the intentional nature of the deceit, the amount of punitive damages was justified and reasonable.

The Sadlers cite primarily to the *Campbell* decision and its dicta regarding a ratio of punitive damages equal to compensatory damages. Petition at 13; *Campbell*, 538 U.S. at 425. The *Campbell* case involved a ratio of 145 to 1. In the same paragraph the Supreme Court noted "a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish." *Id.* Petitioners do not cite a single case in which punitive damages have been reduced to a 1-to-1 ratio with compensatory damages. The present case contains no

factors for the Supreme Court to consider doing such a thing.

The Sadlers ask for reversal due to "speculation" that there could have been physical injuries. Petition at 13. They fail to acknowledge that potential harm is contained in the three-part analysis under *Gore*, supra, 517 U.S. at 574-75. "In figuring harm both actual and potential harm may be considered." *Continental Trend Resources, Inc. v. OXY USA Inc.*, 101 F.3d 634, 639-40 (10th Cir. 1996). "It is appropriate to consider the magnitude of the *potential harm* that the defendant's conduct would have caused to its intended victim if the wrongful plan had succeeded, as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred." *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 460, 113 S. Ct. 2711, 2721-22, 125 L. Ed. 2d 366 (1993) (emphasis original).

The Sadlers claim that the compensatory damages already functioned to punish and deter, referring to mortgage and utility payments. Petition at 14-15. This argument is specious, as such damages were part of the compensatory award due to the double payments incurred by the Hines while they were not able to live in their new home.

The Sadlers further argue that the Trial Court determination of their knowledge was speculative because the infestation and urine stains were not obvious to the Hines or other witnesses. Petition at 15. As shown in the facts above, the Sadlers had

particular knowledge based upon their own experience of living in the house. They tried to poison or deter the mice, and they replaced the previously urine-stained carpets prior to listing the house for sale. They lived with pets that urinated all over the house. The fact that the carpets were shampooed monthly prior to the sale only illustrates the intentional nature of the deceit.

II. Punitive Damages Were Not Used to Punish for Defense of the Claim.

The Sadlers conjecture that the Trial Court awarded punitive damages based in part upon their decision to defend the lawsuit. Petition at 17. Petitioners do not attempt to provide any basis for this argument, which arises out of one statement about the Sadlers' lack of responsibility in the Trial Court's Decision Letter regarding punitive damages (Record at 678-79). As indicated by the New Mexico Court of Appeals (App. 6), there is nothing to indicate the Trial Court was punishing the Sadlers for defending the claim. The statement was in the context of discussing the reprehensibility of the conduct, including the Sadlers' lack of candor, false disclosures, and the nature of the wrongs.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

CHAPPELL LAW FIRM, P.A.
BILL CHAPPELL, JR.
Counsel of Record
MICHAEL HOEFERKAMP
Albuquerque Centre, Suite 150
6001 Indian School Rd. NE
Albuquerque, New Mexico 87110
(505) 878-9600
(505) 878-9696 – FAX
Attorneys for Respondents